

STATE OF IDAHO }  
COUNTY OF KOOTENAI } SS  
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CLERK DISTRICT COURT

DEPUTY

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**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR KOOTENAI COUNTY**

STATE OF IDAHO, DEPARTMENT OF  
FINANCE, SECURITIES BUREAU,

Plaintiff,

vs.

JACK LEE SMILEY,

Defendant.

Case No. CV 07-2341

**AMENDED VERIFIED COMPLAINT**

Fee category: Exempt

COMES NOW the State of Idaho, Department of Finance, Securities Bureau, Gavin M. Gee, Director, by and through its counsel, Alan Conilogue, Deputy Attorney General, and upon information and belief, complains and alleges as follows:

1. This action is brought pursuant to the Idaho Commodity Code, Idaho Code § 30-1501, *et seq.*, and in particular, Idaho Code § 30-1510(2), wherein the Director is authorized to bring actions seeking injunctive and other relief when it appears to the Director that any person has

engaged in or is about to engage in any act or practice constituting a violation of any provision of the Idaho Commodity Code, or any rule or order promulgated thereunder.

2. This action is also brought pursuant to the Idaho Uniform Securities Act (2004), Idaho Code § 30-14-101 *et seq.*, and in particular Idaho Code § 30-14-603, wherein the Department is authorized to bring actions seeking injunctive and other relief against persons who have either violated or are about to violate provisions of the Idaho Uniform Securities Act (2004) or any rule promulgated thereunder.

3. The acts and practices herein comprising violations of law by the above-named Defendant occurred in Kootenai County and elsewhere in the State of Idaho.

#### **FACTS**

4. Defendant Jack Lee Smiley (Smiley), formerly known as Jack Cowart, has been a resident of Coeur d'Alene, Kootenai County, Idaho and has conducted business in Idaho during all times relevant herein. He has conducted business under various names, including Joint Venture Online Investments, SMG, Pristine Construction, Pristine Construction LLC, and Investments Unlimited LLC.

5. Beginning approximately January 1, 2005 and continuing through 2007, Smiley solicited investors to participate in joint venture agreements for the purchase and subsequent sale of Iraqi Dinars, speculating that the Dinars will increase in value. Smiley accepted funds from investors, purchased Dinars and holds them awaiting some unspecified date when they are supposed to increase in value, at which time they will be sold. He did not deliver the Dinars to the investors. Smiley calls this enterprise "The Iraqi Investment" and "The Iraqi Currency Investment," hereafter referred to as the "Enterprise." Despite Smiley's representations, there is no viable market for Iraqi Dinars outside of Iraq.

6. Smiley made the following representations to investors, both verbally and in writing. Smiley did not disclose the basis for these representations, and all are false or so vague as to be misleading.

a. Investors would receive a return of 33 times the amount of their investment in the Enterprise.

b. A \$5,000 investment would result in a return of \$165,000, and a \$100,000 investment would result in a return of \$3,300,000.

c. The new currency, the new Dinar, will be tied to ten-year oil contracts.

d. The new currency will be issued “late March or later in the year,” but the year is not specified.

e. The new currency will be “backed by the US, England and Israel.”

f. “Hallaburton [sic], Large Banks – Corporations, Politicians and the US Military are going to make millions when the new currency comes out (Just like it happened in Kuwait; 5% of the Americans became millionaires then).”

g. Smiley alleged that he was working with a 28 year old currency company registered with the US Treasury Department. He did not disclose the name of this company, but he described his “Business Associates” thus:

- Twenty eight years in the global currency business;
- Second generation of family in the business;
- Maintain three offices in the Middle East;
- “Runs” 15 million to 20 million dollars through a Zurich bank monthly,

but pays no taxes;

- Will buy back the Iraqi Dinars at any time;

- Believe the Iraqi Dinar will trade on the global currency market, starting at .33 to .01, that is, a third of a US cent to one hundredth of a US cent.

7. Smiley personally guaranteed that investors would not lose any money if they invested in the Enterprise, and that he would not use “a nickel [of investors’] money until we succeed.” Smiley offered no factual basis to prospective investors to support such statements, and he converted some investor money to his personal use.

8. Smiley offered investors a finder’s fee of 10% for each \$5,000 of funds invested in the Enterprise by persons referred by the investor.

9. Smiley represented that he would store the Dinars in a safe deposit box. He rented three safe deposit boxes for a short period, but closed all three and removed the contents. The Dinars are not stored in safe deposit boxes.

10. Smiley solicited investors and prospective investors to invest in the Enterprise both through meetings where he made presentations about the Enterprise, and through his direct contact with individuals for that purpose.

11. Smiley did not tell potential investors certain information that would be necessary to make other statements not misleading, and that an investor would likely consider as material to a decision to invest with him. He failed to disclose the following material information:

- a. Smiley did not inform investors or prospective investors that he was not qualified or registered as required by the Idaho Commodity Code to offer or sell any commodity under any commodity contract or under any commodity option, or to offer to enter into or enter into as seller or purchaser any commodity contract or any commodity option.

- b. Smiley did not inform investors or prospective investors that he was not registered as an agent to sell the securities, as required by the Idaho Uniform Securities Act (2004);

c. Smiley did not inform investors or prospective investors that the securities he issued were not registered as required by the Idaho Uniform Securities Act (2004).

d. Information about his financial condition or operating history;

e. The amount and type of compensation to be paid to him.

12. Iraqi Dinars are foreign currency and constitute a commodity under Idaho Code § 30-1501(3).

13. Smiley's joint venture agreements are commodity contracts under Idaho Code § 30-1501(4).

14. Smiley's joint venture agreements are securities under Idaho Code § 30-14-102(28).

15. Defendant, at all times material herein, was not registered with the State of Idaho or the National Association of Securities Dealers (NASD) (now known as the Financial Industry Regulatory Authority, or FINRA) as a broker-dealer, or as a broker-dealer agent.

16. The securities issued by Defendant were not registered with the State of Idaho or the NASD/FINRA.

17. On June 2, 2005 Plaintiff, the Idaho Department of Finance, issued and served a Summary Cease and Desist Order to Smiley, ordering him to immediately cease violating the Idaho Commodity Code. Smiley did not comply with the Order and continued to violate the Idaho Commodity Code as described in this complaint.

#### **VICTIMS**

18. Smiley solicited and accepted money from more than 120 victims. Smiley accepted approximately one million dollars (\$1,000,000) in total from these victims. There may be more victims currently unknown to Plaintiff.

19. On Saturday, January 14, 2006 Smiley represented to victim S.H. that the Dinar was on the verge of being released as an international currency, and that the release could occur by the following Monday. S.H. believed the matter was urgent and wired Smiley \$37,000 the same day. After Smiley received the wired money, he faxed S.H. the joint venture agreement. S.H. noted the provision that Smiley would keep 50% of profits from the joint venture and that Smiley would also keep 50% of S.H.'s investment, or \$18,500. Smiley did not tell S.H. of these provisions before S.H. wired his money. S.H. called Smiley and asked for his money back, and Smiley asserted that because he had received S.H.'s money the contract became binding. Smiley agreed to dissolve the contact but asserted his right to keep \$18,500. Smiley has not returned any money to S.H.

20. Victim D.C. gave Smiley \$125,000 on an unknown date, believed to be in the summer of 2006. On August 16, 2006 D.C.'s wife wrote to Smiley demanding the return of half of the \$125,000, asserting that half was hers under Idaho community property law. Smiley wrote to D.C. on the same day giving D.C. notice of Smiley's intent to dissolve the joint venture agreement, "Due to continued harassment by you and your wife...". Smiley has not returned any of the \$125,000.

21. Smiley did not use all of the money given him to buy Dinars, but instead used some of the money for his personal expenses, contrary to his representation that he would not use any of the invested money until the Enterprise succeeded.

### **IDAHO COMMODITY CODE COUNTS**

#### **COUNT ONE**

**(Violation of Idaho Code § 30-1502)**

22. The allegations of paragraphs (1) through (21) are realleged and incorporated herein as if set forth verbatim.

23. The definition of “commodity” in Idaho Code § 30-1501(3) includes “foreign currency.” Iraqi currency constitutes a commodity pursuant to that definition.

24. Idaho Code § 30-1501(4)(a) defines “commodity contract” to include “[a]ny account, agreement or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption of the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties, and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract or otherwise.” Idaho Code § 30-1501(4)(a) further provides that “[a]ny commodity contract offered or sold shall, in the absence of evidence to the contrary, be presumed to be offered or sold for speculation or investment purposes ...”

25. The Enterprise to invest in Iraqi currency offered and sold by Smiley for investment purposes constitutes a “commodity contract” within the meaning of Idaho Code § 30-1501(4)(a).

26. Idaho Code § 30-1502 provides that no person shall sell or purchase or offer to sell or purchase any commodity under any commodity contract or under any commodity option or offer to enter into or enter into as seller or purchaser any commodity contract or any commodity option, except as provided in Idaho Code §§ 30-1503 or 30-1504.

27. Smiley’s offer and sale of investments to Idaho residents in the Enterprise, constituting a commodity contract within the meaning of Idaho Code § 30-1501(4)(a), without Smiley qualifying for an exemption pursuant to Idaho Code §§ 30-1503 or 30-1504, constitutes a violation of Idaho Code § 30-1502 as to each victim, for a total of at least 120 violations.

**COUNT TWO**  
**(False and Misleading Statements)**

28. The allegations of paragraphs (1) through (21) above are realleged and incorporated herein as if set forth verbatim.

29. Idaho Code § 30-1506(1)(b) provides that it is unlawful for any person, directly or indirectly, in connection with a commodity contract or commodity option, to make any false report, enter any false record or make any untrue statement of material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

30. Smiley's representations set forth in paragraphs 6 through 11 above to prospective investors in the Enterprise had no basis in fact, and therefore were untrue statements of material fact, constituting violations of Idaho Code § 30-1506(1)(b) as to each representation to each investor.

31. Smiley's failure to provide investors or prospective investors with financial information concerning the program, and his own personal financial information as guarantor of such program, constitutes an omission to state a material fact in connection with the offer or sale of a commodity contract or commodity option, constituting a violation of Idaho Code § 30-1506(1)(b) as to each victim, for a total of at least 120 violations.

**COUNT THREE**  
**(Device, Scheme or Artifice to Defraud)**

32. The allegations of paragraphs (1) through (21) above are realleged and incorporated herein as if set forth verbatim.



33. Idaho Code § 30-1506(1)(a) provides that it is unlawful for any person, directly or indirectly, in connection with a commodity contract or commodity option, to employ any device, scheme or artifice to defraud.

34. Smiley's conduct giving rise to the violations of the Act as alleged in this complaint, constitutes a device, scheme or artifice to defraud investors or prospective investors in the Enterprise, in violation of Idaho Code § 30-1506(1)(a) as to each victim, for a total of at least 120 violations.

**COUNT FOUR**  
**(Fraudulent Conduct)**

35. The allegations of paragraphs (1) through (21) above are realleged and incorporated herein as if set forth verbatim.

36. Idaho Code § 30-1506(1)(c) provides that it is unlawful for any person, directly or indirectly, in connection with a commodity contract or commodity option, to engage in any transaction, act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

37. Smiley's conduct giving rise to the violations of the Act alleged in this complaint, constitutes engaging in transactions, acts, practices, or courses of business which operate or would operate as a fraud or deceit upon investors or prospective investors in the Enterprise, in violation of Idaho Code § 30-1506(1)(c) as to each victim, for a total of at least 120 violations.

**COUNT FIVE**  
**(Violation of Cease and Desist Order)**

38. The allegations of paragraphs (1) through (21) above are realleged and incorporated herein as if set forth verbatim.

39. Idaho Code § 30-1511(1) provides that upon a showing by the Director of the Department of Finance that a person has violated an order of the Director, the Court may grant appropriate legal or equitable relief.

40. Smiley did not comply with the Summary Cease and Desist Order issued by the Director of the Idaho Department of Finance on June 2, 2005, thereby entitling the Department to the relief sought in the Prayer for Relief.

### **IDAHO UNIFORM SECURITIES ACT (2004) COUNTS**

#### **COUNT SIX**

#### **(Fraud - False and Misleading Statements)**

41. The allegations of paragraphs 1 through 21 above are realleged and incorporated herein as if set forth verbatim.

42. Idaho Code § 30-14-501(2) provides that it is unlawful for any person, directly or indirectly, in connection with the offer, sale or purchase of a security, to make an untrue statement of material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

43. Smiley's misrepresentations to prospective investors as set forth in paragraphs 6 through 11 were made in connection with the offer, sale or purchase of securities. These misrepresentations were false and misleading, constituting violations of Idaho Code § 30-14-501(2) as to each misrepresentation to each investor.

44. Smiley's omissions of material facts and failures to disclose to prospective investors, as set forth in paragraphs 6 through 11, were made in connection with the offer, sale or purchase of securities. These omissions of material facts and failures to disclose constitute violations of Idaho Code § 30-14-501(2) as to each omission and failure to disclose to each investor.

**COUNT SEVEN**  
**(Fraudulent Conduct)**

45. The allegations of paragraphs 1 through 21 above are realleged and incorporated herein as if set forth verbatim.

46. Idaho Code § 30-14-501(3) provides that it is unlawful for any person, directly or indirectly, in connection with the offer, sale or purchase of a security, to engage in an act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

47. Smiley's acts as set forth in paragraphs 1 through 21 were made in connection with the offer, sale or purchase of securities. His conduct as described in paragraphs 1 through 21 constitutes engaging in transactions, acts, practices, or courses of business which operate or would operate as a fraud or deceit upon investors or prospective investors, in violation of Idaho Code § 30-14-501(3) as to each victim.

**COUNT EIGHT**  
**(Unregistered Securities)**

48. The allegations of paragraphs 1 through 21 above are realleged and incorporated herein as if set forth verbatim.

49. Smiley issued, sold or offered for sale in Idaho securities in the form of joint venture agreements. Such securities were not registered with the Department as required by Idaho Code § 30-14-301.

50. Smiley's failure to register such securities with the Department constitutes a violation of Idaho Code § 30-14-301.

**COUNT NINE**  
**(Failure to Register)**

51. The allegations of paragraphs 1 through 21 above are realleged and incorporated herein as if set forth verbatim.

52. Smiley transacted business in Idaho as an issuer of securities or as an agent of an issuer of securities. He was not registered as an agent with the Department as required by Idaho Code § 30-14-402(a).

53. Smiley's failure to register as an agent with the Department constitutes a violation of Idaho Code § 30-14-402(a).

**PRAYER FOR RELIEF**

WHEREFORE, the Department prays for a judgment in favor of the Department and against Smiley as follows:

IDAHO COMMODITY CODE VIOLATIONS

1. That Smiley be adjudged to have violated the Idaho Commodity Code, Idaho Code § 30-1501 *et seq.*, rules promulgated thereunder, and other applicable federal laws and regulations as proven at trial, as to Counts One through Five alleged above, as well as any additional counts proven at trial.

2. That Smiley be adjudged to have violated the Cease and Desist Order issued by the Director of the Idaho Department of Finance.

3. That Smiley be permanently enjoined from engaging in any act or practice violating any provision of the Idaho Commodity Code or any rule promulgated thereunder, or any applicable federal laws or regulations, pursuant to Idaho Code § § 30-1510(2)(b) and 30-1511(1)(a), and in particular, that he be permanently enjoined from:

a. Selling or purchasing, or offering to sell or purchase, entering into, or offering to enter into, any commodity under any commodity contract or option, without complying with Title 30, Chapter 15, Idaho Code;

b. Engaging in a trade or business or otherwise acting as a commodity merchant, without first being licensed or registered with the Commodity Futures Trading Commission;

c. In connection with a commodity contract or commodity option, directly or indirectly:

i. Employing any device, scheme, or artifice to defraud;

ii. Making any false report, entering any false record, or making any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading;

iii. Engaging in any transaction, act, practice or course of business which operates or would operate as a fraud or deceit upon another person; and

iv. Misappropriating or converting the funds, security or property of any other person.

4. That Smiley be ordered to pay a civil penalty of up to \$5,000 for each violation of the Act as the Court deems appropriate, pursuant to Idaho Code § 30-1511(1)(b)(i), for total penalties of at least \$10,000, and that the Court award a money judgment in favor of Plaintiff in such amount.

5. That Smiley be ordered to disgorge all money rightfully belonging to the victims, in amounts to be proven at trial, pursuant to Idaho Code § 30-1511(1)(b)(ii).

6. That Smiley be ordered to conduct an accounting to determine how many Dinars were purchased for each investor.

7. That a receiver be appointed to take possession of the Dinars, and that Smiley be ordered to deliver said Dinars to the receiver. That the receiver make best efforts to sell the Dinars and reimburse investors with proceeds of sale, if any. That at such time as the receiver determines that no further proceeds can reasonably be obtained from sale of the Dinars, the receiver shall certify to the Court the amount still owed by Smiley to the investors. That Smiley be ordered to pay restitution to the Department on behalf of injured investors, pursuant to Idaho Code § 30-1511(1)(b)(iv), and that the Court amend this judgment and award a money judgment in favor of Plaintiff, in the amount not satisfied by the Receiver's sale of the Dinars.

8. That Plaintiff be awarded attorney fees and costs incurred in the preparation and prosecution of this action, pursuant to Idaho Code § 12-121, and that the Court award a money judgment in favor of Plaintiff in such amount. Should judgment be taken by default herein, Plaintiff asserts that \$5,000 is a reasonable sum for the same.

9. For such further relief as this Court may deem just and equitable under the circumstances.

#### IDAHO UNIFORM SECURITIES ACT (2004) VIOLATIONS

10. That Smiley be adjudged to have violated the Idaho Uniform Securities Act (2004), Idaho Code § 30-14-101 et seq., rules promulgated thereunder, and other applicable federal laws and regulations as proven at trial, as to Counts Six through Nine alleged above, as well as any additional counts proven at trial.

11. That Smiley be permanently enjoined from engaging in any act or practice violating any provision of the Idaho Uniform Securities Act (2004) or any rule promulgated thereunder, pursuant to Idaho Code § 30-14-603(b)(1), and in particular, that he be permanently enjoined from:

a. Selling or offering for sale nonexempt securities in any form in the state of Idaho without first registering them with the Department in accordance with Title 30, Chapter 14, Idaho Code;

b. Selling or offering for sale nonexempt securities in any form in the state of Idaho without first becoming registered as a broker-dealer and/or broker-dealer agent with the Department in accordance with Title 30, Chapter 14, Idaho Code;

c. In connection with the offer, sale or purchase of any security, directly or indirectly:

i. Employing any device, scheme, or artifice to defraud;

ii. Making any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading;

iii. Engaging in any act, practice or course of business that operates or would operate as a fraud or deceit upon another person.

12. That Smiley be ordered to pay a civil penalty of up to \$10,000 for each violation of the Act as the Court deems appropriate, pursuant to Idaho Code § 30-14-603(b)(2)(C), for total penalties of at least \$40,000, and that the Court award a money judgment in favor of Plaintiff in such amount.

13. That Smiley be ordered to disgorge all money rightfully belonging to the investors, in amounts to be proven at trial, pursuant to Idaho Code § 30-14-603(b)(2)(C).

14. That Smiley be ordered to conduct an accounting to determine how many Dinars were purchased for each investor.


15. That a receiver be appointed to take possession of the Dinars, and that Smiley be ordered to deliver said Dinars to the receiver. That the receiver make best efforts to sell the Dinars and reimburse investors with proceeds of sale, if any. That at such time as the receiver determines that no further proceeds can reasonably be obtained from sale of the Dinars, the receiver shall certify to the Court the amount still owed by Smiley to the investors. That Smiley be ordered to pay restitution to the Department on behalf of injured investors, pursuant to Idaho Code § 30-14-603(b)(2)(C), and that the Court amend this judgment and award a money judgment in favor of Plaintiff, in the amount not satisfied by the Receiver's sale of the Dinars.

16. That Plaintiff be awarded attorney fees and costs incurred in the preparation and prosecution of this action, pursuant to Idaho Code § 12-121, and that the Court award a money judgment in favor of Plaintiff in such amount. Should judgment be taken by default herein, Plaintiff asserts that \$5,000 is a reasonable sum for the same.

17. For such further relief as this Court may deem just and equitable under the circumstances.

DATED this 25 day of February, 2008.

STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL

  
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ALAN CONILOGUE  
Deputy Attorney General



VERIFICATION

STATE OF IDAHO    )  
                          )ss.  
County of Ada        )

MARILYN T. CHASTAIN, Bureau Chief of the Securities Bureau of the Department of Finance, State of Idaho, being first duly sworn, deposes and says:

I have read the foregoing Verified Complaint, and know the contents thereof; and that the same are true to the best of my knowledge and belief.

DATED this 19<sup>th</sup> day of February, 2008.

*Marilyn T. Chastain*  
MARILYN T. CHASTAIN

SUBSCRIBED AND SWORN to before me this 19<sup>th</sup> day of FEBRUARY, 2008.

*Martha L. Cooper*  
Notary Public for Idaho  
Residing at: Boise Id  
My Commission Expires: 11-26-08

